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8 THE ARK, INC. and AEGIS COUNCIL, LLC

9 UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

11 THE ARK, INC. and AEGIS
12 COUNCIL, LLC,

13 Petitioners, Case No.

14 vs.

15 INTERNAL REVENUE SERVICE,

16 Respondent.
17 _____/

18
19 **PETITION FOR ORDER QUASHING SUMMONSES**

20 COME NOW Petitioners The Ark, Inc. and Aegis Council, LLC and petition for
21 an order quashing the summonses issued May 11, 2012 by the Respondent Internal
22 Revenue Service and by this petition respectfully allege:

23 1. This Court has jurisdiction over this petition pursuant to 28 U.S.C. §1331
24 because this petition arises under the laws of the United States, specifically, 26 U.S.C.
25 §7602, which governs the information gathering powers of the Respondent Internal
26 Revenue Service.

27 2. Venue is proper in the United States District Court for the District of
28 Nevada under 28 U.S.C. §1391(b) and (c).

1 3. Petitioner The Ark, Inc. is a dissolved Nevada corporation with its former
2 principal place of business at 155 Cadillac Place, Reno, Nevada, which at all relevant
3 times was engaged in the business of financial advisory and marketing.

4 4. Petitioner Aegis Council, LLC is a Nevada limited liability company with
5 its principal place of business at 155 Cadillac Place, Reno, Nevada, which at all relevant
6 times was engaged in the business of a financial advisory and marketing.

7 5. Late in the afternoon of April 26, 2007, IRS special agents David Taylor
8 and Landon Tuchenor appeared at Petitioners' door and showed their business cards,
9 advising Petitioners' owner, Stephanie Olsen, that they would like to talk to her because
10 someone in their office asked them to speak to her.

11 6. Special agents Taylor and Tuchenor had not made an appointment and
12 arrived unannounced.

13 7. Prior to Taylor and Tuchenor appearing at Petitioners' place of business, no
14 one from the IRS had contacted or communicated with Petitioners concerning any alleged
15 violation of any tax law.

16 8. Because it was near the end of the day, Olsen asked Taylor and Tuchenor to
17 return the next morning.

18 9. On April 27, 2008, Taylor appeared at Petitioners' place of business with
19 four IRS summonses directed to each of four companies, two of those companies being
20 the Petitioners, demanding that they copy and produce all of their business, corporate and
21 financial records for the years 2006 through the date of the summonses.

22 10. A true copy of the summons issued to The Ark, Inc. is attached as Exhibit
23 1. The summonses to the other three companies are identical except the name of the
24 company.

25 11. The summonses required six years of records to be produced no later than
26 10 a.m. May 10, 2012, which allowed Petitioners nine business days to copy virtually all
27 of their records of business activity over a six-year time period.
28

1 12. The summonses notified Petitioners that the IRS was conducting a criminal
2 investigation; further, if Petitioners did not comply as directed, a person responsible
3 would be arrested and brought before the Court to stand trial for contempt.

4 13. On April 27, 2012, Petitioners' counsel Mark Wray provided powers of
5 attorney (Form 2848) to Taylor and asked Taylor to explain what the IRS was
6 investigating.

7 14. Taylor told Wray that "Aegis Shield" was the topic and "you can't sell a
8 loss." Despite requests to elucidate, Taylor has declined to explain anything to
9 Petitioners or their counsel beyond stating the phrases "Aegis Shield" and "you can't sell
10 a loss."

11 15. Aegis Shield is a leveraged forward contract that is not a product of the
12 Petitioners, but is a financial product which was made available to clients of Petitioners
13 to purchase from another company in approximately the end of 2009.

14 16. The summonses do not ask for records concerning Aegis Shield, but rather
15 for business, corporate, and financial records of the four companies over a six-year
16 period, including years the years 2006, 2007 and 2008, before the Aegis Shield product
17 even existed.

18 17. On May 1, 2012, Wray faxed a communication to Taylor complaining that
19 the demands in the summonses would require a huge undertaking and involve massive
20 amounts of documents. Wray questioned why the IRS was not asking for records
21 concerning Aegis Shield, but instead, the IRS appeared to be engaged in a fishing
22 expedition for records of the four companies dating back years before Aegis Shield even
23 existed.

24 18. On or about May 3, 2012, Taylor notified Wray that the summonses could
25 be disregarded because the IRS would be issuing replacement summonses.

26 19. On May 11, 2012, Taylor issued and served on Petitioners two new
27 summonses, true copies of which are attached as Exhibit 2.

28 20. The new summonses contain three main categories of documents:

1 (a) The first category of records in the new summonses was books and records,
2 broadly defined to include all records relating to any banking, transactional or financial
3 matters, and all client files, for a six-year period from 2006 to May 11, 2012.

4 (b) The second category of records was unclear, but appeared to relate to all
5 client records for private placement insurance, captive life insurance, insurance premium
6 financing, and “repatriation of untaxed funds”, none of which has anything to do with
7 Aegis Shield, and none of which are programs that the Petitioners have actually sold to
8 clients; however, insofar as the second category demanded client files, the records
9 demanded in the second category were already demanded in the first category anyway.

10 (c) The third category of records was for records of presentations, including
11 webinars, including the “leveraged forward contract program”, which would loosely
12 describe Aegis Shield, although the demands in the third category related to other
13 presentations as well.

14 21. The summonses purported to require the Petitioners produce all the
15 requested records by 10 a.m. on May 22, 2012 – a period of essentially five business days
16 -- or else a person responsible for the noncompliance would be subject to arrest for
17 contempt.

18 22. Stephanie Olsen was the president of The Ark, Inc. and is the president of
19 Aegis Council, LLC.

20 23. During the time period covered by the summonses, Ms. Olsen managed up
21 to 18 employees at one time at the Reno offices of The Ark, Inc., but at present, she has
22 only three remaining employees, including two in Reno and one in Salt Lake City.

23 24. From 2006 until it dissolved in 2010, The Ark, Inc. had on its database an
24 estimated 4,500 to 5,000 contacts, including an estimated 2,500 clients.

25 25. For each client, The Ark, Inc. and Aegis Council, LLC typically would
26 maintain a file that included various forms of agreements, such as corporate or limited
27 liability company formations, family and other trusts, correspondence, financial
28 statements, assets lists, and a myriad of other financial planning-related records, kept in

1 electronic form on a computer, in hard copy form in a file, or both. Each client would
2 typically have one or more service agreements with The Ark, Inc. In addition, for each
3 client there would be emails and call logs pertaining to each client. A client file therefore
4 would be similar in nature and scope to what a law firm keeps for each of its clients.

5 26. The summonses issued to Petitioners on May 11, 2012 purported to allow
6 Petitioners five business days to reproduce *inter alia* every client file for thousands of
7 clients over a six year period.

8 27. Although the Respondent IRS and Taylor refuse to explain the alleged
9 purpose of their investigation, Petitioners are informed and believe that the Respondent's
10 summonses knowingly abused the process by demanding Petitioners produce records that
11 are far outside any possible legitimate investigatory purpose.

12 28. Petitioners are further informed and believe that the Respondent crafted the
13 summonses to abuse the process, by requiring the Petitioners to reproduce virtually every
14 single record of their businesses for a six year period.

15 29. Petitioners are further informed and believe that the Respondent knowingly
16 drafted the summonses so that complying with them would be virtually impossible given
17 the limited resources available to Petitioners and the vast breadth of the document
18 demands.

19 30. Petitioners are further informed and believe that the Respondent issued the
20 summonses knowing and having reason to know that attempting to comply would force
21 Petitioner Aegis Council, LLC to cease doing business entirely.

22 31. Upon receiving the summonses on May 11, 2012, Wray faxed a complaint
23 to Taylor about the size and breadth of the request, a true copy of which is attached as
24 Exhibit 3, and Taylor responded telephonically that he would allow additional time for
25 compliance, so long as all the records that could be reproduced by May 22 were in fact
26 copied and delivered.

1 32. Wray advised Taylor that the Petitioners did not know the appropriate
2 procedure for objecting to an IRS subpoena but that the Petitioners would learn how and
3 file a motion to quash.

4 33. Generally, the power of the IRS to obtain records through criminal
5 investigations is broad but not unlimited.

6 34. The IRS is authorized under 26 U.S.C. §7602 to obtain documents or
7 testimony from a taxpayer for the purpose of inquiring into whether an offense related to
8 the internal revenue laws has been committed, subject to satisfying a four-step prima
9 facie showing: (1) that the investigation will be conducted pursuant to a legitimate
10 purpose; (2) that the inquiry may be relevant to the purpose; (3) that the information
11 sought is not already within the Commissioner's possession; and (4) that the
12 administrative steps required by the Internal Revenue Code have been followed. *United*
13 *States v. Powell*, 379 U.S. 48, 57-58, 85 S. Ct. 248, 13 L. Ed. 2d 112 (1964)); *United*
14 *States v. Dynavac, Inc.*, 6 F.3d 1407, 1414 (9th Cir. 1993).

15 35. In *Powell*, the court said: "A court may not permit its process to be abused.
16 Such an abuse would take place if the summons had been issued for an improper purpose,
17 such as to harass the taxpayer or to put pressure on him to settle a collateral dispute, or
18 for any other purpose reflecting on the good faith of the particular investigation. *Id.*

19 36. Once a prima facie showing is made by the IRS, the burden then shifts to
20 the taxpayer to "challenge the summons on any appropriate ground." *Powell*, 379 U.S. at
21 58. An "appropriate ground" is established "when the taxpayer disproves one of the four
22 elements of the government's *Powell* showing, or otherwise demonstrates that
23 enforcement of the summons will result in an abuse of the court's process." *United States*
24 *v. Rockwell Intern.*, 897 F.2d 1255, 1262 (3rd Cir. 1990).

25 37. In responding to the Government's prima facie case, a taxpayer must
26 factually oppose the Government's allegations by affidavit. Legal conclusions or mere
27 memoranda of law will not suffice. *Thornton v. United States*, 493 F.2d 164, 167 (3d Cir.
28 1974)). This petition is verified under oath.

1 38. A “heavy” burden falls on the taxpayer to show an abuse of process or lack
2 of good faith. *United States v. Abrahams*, 905 F.2d 1276, 1280 (9th Cir. 1990); *Liberty*
3 *Financial Servs. v. United States*, 778 F.2d 1390, 1392 (9th Cir. 1985).

4 39. That heavy burden is not made lighter on the taxpayer when the IRS refuses
5 to discuss the nature and purpose of its investigation, as has occurred in this case. It is
6 fairly difficult for the taxpayer to carry its burden of disproving the second element of the
7 *Powell* test, that the “inquiry is relevant to the purpose” of the investigation, in a situation
8 where the purpose of the investigation is being concealed from the taxpayer.

9 40. In addition to other benefits in enforcing administrative summonses, the
10 IRS has the benefit of a relaxed standard of “relevance.” The IRS is not “required to
11 establish that the documents it seeks are actually relevant in any technical, evidentiary
12 sense.” *United States v. Arthur Young & Co.*, 465 U.S. 805, 814, 104 S. Ct. 1495, 79 L.
13 Ed. 2d 826 (1984). The IRS only needs to show “*potential* relevance to an ongoing
14 investigation, without reference to its admissibility.” *Id.* (emphasis in original).

15 41. Despite the advantages enjoyed by the IRS, and despite the refusal of the
16 IRS to explain what it is allegedly investigating, Taylor has stated that the investigation
17 concerns Aegis Shield and “you can’t sell a loss”. From these remarks it fairly may be
18 deduced and inferred that records *prior to the time that Aegis Shield was available* should
19 be irrelevant, even under the lax standard of “relevance” enunciated in *Arthur Young*,
20 *supra*.

21 42. Since Aegis Shield became available in late 2009, and the summonses
22 demand all the books and records, including client files and other documents from 2006
23 forward, the summonses do *not* have potential relevance to the investigation to the extent
24 they call for records to be produced from prior to October, 2009, and the summonses
25 should be quashed under the relevance standard of *Powell* and *Arthur Young*.

26 43. The “heavy” burden of showing lack of good faith and abuse of process
27 may be difficult to meet in other cases, but here, the (1) the summonses purport to compel
28 the Petitioners to produce a massive quantity of records, (2) in an impossibly short

1 period of five business days, (3) after the IRS had served an equally oppressive summons,
2 (4) in which summonses the demands continue to be unfathomably overbroad, and (5) the
3 records demanded are irrelevant to the supposed purpose of the investigation.


4 44. Petitioners are informed and believe that the ulterior purpose of the
5 summonses is to force Petitioners to cease operating their business to try to reproduce all
6 the records demanded by the summonses.

7 WHEREFORE, Petitioners respectfully request:

- 8 1. That the Court determine the nature and purpose of the IRS investigation
9 and that the summonses are irrelevant thereto;
10 2. That the Court quash the summonses;
11 3. That the Court award reasonable attorneys fees and costs; and
12 4. That the Court award all other appropriate relief.

13 DATED: May 21, 2012

LAW OFFICES OF MARK WRAY

14
15 By 
16 MARK WRAY
17 Attorneys for Petitioners
18 THE ARK, INC. and AEGIS COUNCIL, LLC
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VERIFICATION

The undersigned is the duly authorized officer, manager and agent of Petitioners and is familiar with the contents of the foregoing petition. The facts stated in the foregoing petition are true and correct, except for facts stated on information and belief, and as to those facts, the undersigned believes them to be true. This verification is executed under the penalties of perjury under the laws of the United States at Reno, Nevada on May 21, 2012.



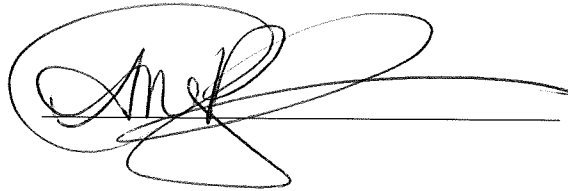
STEPHANIE OLSEN

CERTIFICATE OF SERVICE

The undersigned employee of the Law Offices of Mark Wray certifies that a true copy of the foregoing document was served by personal delivery and also sealed in an envelope with first class postage prepaid thereon and served via certified U.S. Mail at Reno, Nevada on May 21, 2012 addressed as follows:

David Taylor, Special Agent
Internal Revenue Service
200 S. Virginia St., Suite 105
Reno, NV 89501

Daniel G. Bogden, U.S. Attorney
100 W. Liberty St., Ste 600
Reno, NV 89501

A handwritten signature in black ink, appearing to read 'Mark Wray', is written over a horizontal line. The signature is stylized with large, sweeping loops.